

ESTABLISHING PATERNITY OR MATERNITY

The court will need to decide who the father of the child is before addressing the issue of child support. Paternity, the legal determination of a child's father, must be established by clear and convincing evidence through one of the following ways:

Genetic testing is a scientific way to determine paternity. Either parent, the court, DCSE, or the child can request genetic testing at any time. The testing may be requested for all, some, or one of the children of the parents; there is no requirement to test all children allegedly born between the individuals. Generally, the party who asked for the test has to pay for it. In Virginia there is a legal presumption that a child conceived during a marriage is the child of the husband. However, that presumption does not prevent the husband or former husband from requesting genetic testing. Obviously, the best time to request a genetic test is the first time a child support matter comes before the court.

Once genetic testing has been requested, the court will order both presumptive parents and the child report on the specified date, time, and place to a state-contracted health worker for testing, normally at a DCSE office. Both presumptive parents must provide photographic identification--driver's license, military identification card, passport, etc.--to prove their identity. The individual's picture will be taken and will accompany the test report throughout the process for verification purposes. Individuals without photographic identification or who refuse to provide information will not be tested. The test is a painless and completely safe procedure for both the child and parents.

A "buccal swab" – basically a Q-tip – is rubbed in four areas of the mouth to collect a sample of the individual's DNA – their unique genetic code. Normally six genetic markers of the child and both prospective parents are compared from the samples of DNA. Through a mathematical calculation, the probability of paternity is determined – the likelihood that the individual is the child's father. The results of the genetic test will be in a written report from the laboratory. They will either indicate that there is a zero chance of the individual having fathered the child, or some percentage. Any test result of 98 percent or greater probability of paternity is sufficient proof under the Code of Virginia to establish paternity by clear and convincing evidence.

If the results are filed with the court at least fifteen days prior to the hearing or trial, there is no requirement for a witness to establish the foundation for the test results. If a parent wishes to have a witness available to testify as to the analysis of the genetic test results, they must motion to the court to summon the witness at least seven days prior to the hearing or trial. The parent requesting the witness to appear and testify may be required by the court to pay for the witnesses' costs and fees or provide security in advance to cover the costs and fees.

Failure to appear or cooperate with genetic testing, if ordered by the court, can lead to punishment by the court in terms of fines or even possible jail time. Parties may not provide "private" DNA tests results, such as through sources available over the Internet, to the court.

Testing can also be arranged to be conducted at different locations or for individuals out of state. If the safety of a party or a child is at issue, the court or DCSE can arrange for separate testing. It is also possible to test just the child and the alleged father; A “motherless” test is conducted in the same manner when the mother is deceased or otherwise unavailable.

A statement of paternity is a voluntary, written statement made by the mother and father under oath. A properly completed statement of paternity has the same legal effect as an order.

Other evidence of fathering a child includes facts indicating, but not limited to:

- sexual intercourse or cohabitation between the parents at the probable time of conception of the child; or
- the father agreeing to have a child use his last name; or
- the father claims the child on his taxes or with a government agency; or
- an admission by the father that the child is his.

Adoptions can be shown by a court order or other evidence. In adoption cases, genetic tests are not needed.

Maternity: In instances of a noncustodial mother, the court can enter an order of maternity using any one of the means listed above, or through other evidence that the woman gave birth to the child. Examples of such evidence include the child’s birth certificate, hospital records, medical records, testimony of people with knowledge of the birth, or statements of the mother.

What Happens after Paternity is Decided?

If the court finds that an individual is the father of a child, it will enter a paternity order or decree establishing the parent-child relationship. Unless that order is later overturned on appeal or by a disestablishment action, paternity is legally determined with the entry of the order. A paternity order is different from a birth certificate. A birth certificate is the official documentation of a live birth; it does not legally establish paternity. If either parent wants to receive or make changes to a birth certificate, the parent must contact the Office of Vital Records at (804) 662-6200 or via mail at the following address:

Virginia Department of Health
Office of Vital Records and Health Statistics
P.O. Box 1000
Richmond, VA 23218-1000

Web site: <http://www.vdh.state.va.us>

A paternity order does not, by itself, establish a child support obligation. Once paternity is determined, the next question the court normally addresses is whether a child support obligation should be created and the amount of the obligation.